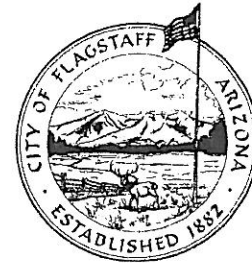


CITY OF FLAGSTAFF

STAFF SUMMARY REPORT



To: The Honorable Mayor and Council

From: James Wine, Deputy City Manager
Ext 7299

Date: January 21, 2009

Meeting Date: February 3, 2009

TITLE: CONSIDERATION OF CITIZEN PETITION FOR DIRECTION TO STAFF REGARDING A NEW CITY NOISE ORDINANCE.

RECOMMENDED ACTION:

1. The City Council may table the action to allow time to gather more information.
 2. The City Council may direct staff to prepare a new ordinance as submitted.
 3. The City Council may direct staff to prepare a new noise ordinance with modifications.
 4. The City Council may vote to take no action.
-

ACTION SUMMARY:

Section 8 provides Council the opportunity for discussion and to provide direction to staff.

DISCUSSION:

Background/History:

Residence at Ridgecrest Drive submitted a petition to City Council proposing that a new City noise ordinance be adopted.

Key Considerations:

The Flagstaff City Charter, Article II, Section 17, requires that "any citizen of the City may present a written petition to the City Manager, who shall present it to the Council at its next regular meeting." Section 17 also requires the Council to act, in its regular course of business, within 31 days after the presentation of the petition.

Staff has not reviewed this item at this time. On the surface the scope of the proposed ordinance is significant in terms of time, structure, and resources. This effort would first need some scoping time before staff could give a recommendation.

Community Benefits and Considerations:

Unknown.

Community Involvement:

None.

Financial Implications:

Financial Implications cannot be determined until Council give direction to staff.

Options and Alternatives:**Attachments/Exhibits:**

Citizen Petition
 City of Tucson Noise Ordinance
 City of Flagstaff Party Ordinance



Division Head *(Acknowledgment that all reviews have been completed and required approvals initialed below.)*

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
_____	BIDS/PURCHASES	_____	_____	FINANCE/BUDGET	_____
_____	GRANTS	_____	_____	CONTRACTS	_____
_____	LEGAL	_____	_____	IGAS	_____
_____	_____	_____	_____	_____	_____

DATE OF COUNCIL APPROVAL: _____

City of Flagstaff



Memorandum

Office of the City Clerk

TO: Mayor and Council

FROM: Margie Brown, City Clerk *mb*

DATE: January 15, 2009

RE: **Noise Ordinance Petition**

Attached is a copy of the petition that was handed in at the January 13, 2009 City Council work session. I've not attached a copy of the Tucson ordinance as it's my understanding that Laura Matthews provided you with that information separately.

If, however, you still need a copy, please be sure to let me know.

Thanks.

cc: Kevin Burke, City Manager
Jim Wine, Deputy City Manager
Ben Fisk, Deputy City Manager

1-12-08

Dear Mayor Pressler and Council members,

We are residents and home owners on Ridgecrest Dr. We are proposing that a city noise ordinance be put in place, such as the one in Tucson. We have witnessed loud and unruly behaviors at 18 Ridgecrest Dr for the past year. Numerous calls to the police have been made. The neighbors on both sides have been victims to their unruly behaviors. For example, people urinating and vomiting on their property, littering, threats to fight, people hiding from the police in their backyards. We have spoken with the tenants and the landlord in regards to this problem. Two separate police reports have been made from both residences on both sides of 18 Ridgecrest. This has not put an end to their partying. We ask that you support Flagstaff residents in adopting a noise ordinance that will protect the peace, health and safety and general welfare of the public.

Gretchen Kies 310-8873

Signature	Address
Gretchen Kies	14 Ridgecrest Dr. 86001
Matthew K	14 RIDGECREST DR 86001
Alberto A. Tim-ATZ	14 Ridgecrest Dr. 86001
Paul Taylor	13 Ridgecrest Dr. 86001
Bob Franklin	13 Ridgecrest Dr. 86001
Steve G	22 Ridgecrest Dr. 86001
Chris G	22 Ridgecrest Dr. 86001
Michelle G	22 Ridgecrest Dr. 86001
Paul G	21 Ridgecrest Dr. 86001
Christa S. Seligman	21 Ridgecrest Dr. 86001
Hue G	26 Ridgecrest Dr. 86001
G	8 RIDGECREST DR. 86001
G	8 RIDGECREST DR 86001
Secur	119 S. Paseo Del Flag 86001
Secur	119 S. Paseo Del Flag 86001

ORDINANCE NO. 1934

AN ORDINANCE OF THE CITY OF FLAGSTAFF, ARIZONA, ENACTING A NEW SECTION (0005) TO TITLE 6 (POLICE REGULATIONS), CHAPTER 6-08 (NOISE CONTROL), DIVISION 6-08-001, PROVIDING FOR RECOVERY OF COSTS FOR POLICE SERVICES ARISING FROM POLICE RESPONSE TO LARGE PARTIES, GATHERINGS OR EVENTS.

WHEREAS, the Council finds and determines that the control of large parties, gatherings or events on private or public property is necessary when such continued activity is determined to be a threat to the peace, health, safety or general welfare of the public; and

WHEREAS, police officers are often required to make several return trips to the location of a party, gathering or event in response to complaints from the public, in order to disperse uncooperative participants and/or enforce criminal laws; and

WHEREAS, an increased response of officers or the return of police officers and/or emergency City services to a location constitutes a drain on personnel and resources which may leave other areas of the City without minimal levels of police protection; and

WHEREAS, a significant hazard to the safety of the police officers and to the general public is thereby created;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1: That the following Section is hereby added to Title 6 (Police Regulations), Chapter 6-08 (Noise Control), Division 6-08-001 of the Flagstaff City Code and shall be known as 6-08-001-0005 and shall read as follows:

6-08-001-0005. LARGE PARTIES, GATHERINGS OR EVENTS:

A. DEFINITIONS

"Large party, gathering or event" means a party, gathering or event of five (5) or more persons who have assembled or are assembling for a social activity or for a special occasion;

"Special security assignment" means the police services provided during a second or subsequent call during a twelve (12) hour period to the location of a large party, gathering or event after a written

notice has been given that a police service fee may be imposed for costs incurred by the City for any return or subsequent police response.

"Increased response" means the response of more than two uniformed officers to the scene of a large party, gathering or event where necessary to restore the public peace, health, safety and/or general welfare.

"Police service fee" is that fee which shall be imposed for a special security assignment or increased response. The fee shall be according to a schedule adopted by the Police Chief which is based on the number of officers and units per hour. Said schedule may also include appropriate overhead, the cost of any medical treatment to injured officers, and any other loss or damage incurred by the Police Department in the course of a special security assignment or increased response. The fee may also include the cost or loss incurred by any other law enforcement agency or City department responding at the request of the Flagstaff Police Department.

"Responsible person" means a person who is present at the large party, gathering or event and who is in charge of the premises or who organized the large party, gathering or event. If the responsible person is a minor, the term "responsible person" includes, in addition to the minor, the minor's parent(s) or legal guardian(s).

B. WRITTEN NOTICE

When a police officer responds to a large party, gathering or event for the purpose of restoring the public peace, health, safety or general welfare, the officer shall issue a written notice to any responsible party that a second or subsequent response to that same location or address within twelve (12) hours of the first response shall be deemed a special security assignment and that any responsible party may be liable for a police service fee for such special security assignment.

C. RECOVERY OF COSTS FOR POLICE SERVICES

1. If, after written notice is given pursuant to subsection B. above, a second or subsequent police response is necessary to the same location or address within twelve (12) hours of the first response, such response shall be deemed a special security assignment and any responsible person(s) shall be subject to the police service fee as provided in this Section.
2. In the event an increased response to the scene of a large party, gathering or event is necessary to restore the public peace, health, safety and/or general welfare, any responsible person(s) shall be subject to the police service fee as provided in this Section.

D. POLICE SERVICE FEE

1. The police service fee for a special security assignment or increased response shall not exceed one thousand dollars (\$1,000.00) for a single incident.
2. Where there is more than one responsible person for a large party, gathering or event for which a police service fee is imposed, all responsible persons are jointly and severally liable to the City of Flagstaff for payment of the police service fee. Where a responsible person is a minor, the minor's parents or legal guardians are jointly and severally liable for payment of the police service fee. All responsible persons owing a police service fee may be liable in an action brought in the name of the City for recovery of the police service fee, including reasonable attorney fees.
3. The City does not waive its right to seek reimbursement for costs exceeding one thousand dollars (\$1,000.00) through other legal remedies or procedures.

E. BILLING

The Chief of Police or any person designated by the Chief of Police shall cause appropriate billings for the police service fee to be made to the responsible person(s). Billings shall include the name and address of the responsible person, the date, time and location of the incident for which a police service fee is imposed, and shall identify the services provided, any loss or damage and such other information as may be relevant.

F. ADMINISTRATIVE REVIEW

A responsible person who has been billed for a police service fee may seek administrative review of the imposition of said fee. A request for review shall be in writing to the Chief of the Flagstaff Police Department, and shall be received by the Chief no later than ten days (excluding holidays and weekends) from the date the police service fee invoice was issued. The request for review shall contain a concise statement as to why imposition of the police service fee is improper or the fee amount incorrect. The Chief of Police shall issue a final decision in writing which shall include the reason(s) for the decision. A final review may be made by the Flagstaff City Manager, and shall be requested in writing within five days (excluding holidays and weekends) of the date the Chief of Police issues a decision.

G. OTHER REMEDIES

Nothing in this Section shall be construed as affecting concurrent or subsequent criminal prosecution for any violation arising out of the circumstances necessitating the application of this Section.

PASSED AND ADOPTED by the Council and approved by the Mayor of the City of Flagstaff, this 18th day of February, 1997.



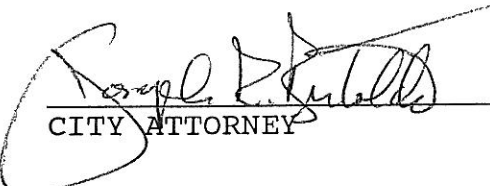
MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

Jim's CC

Tucson, Arizona

NOISE ORDINANCE ADOPTED BY THE MAYOR AND COUNCIL 5-6-96

ORDINANCE NO. 8683

RELATING TO CIVIL INFRACTIONS AND NUISANCES; ADDING NEW ARTICLE VIII TO CHAPTER 11 OF THE TUCSON CODE; MAKING IT A CIVIL INFRACTION TO CONDUCT LOUD OR UNRULY PARTIES, GATHERINGS, OR OTHER EVENTS RESULTING IN MULTIPLE POLICE RESPONSES; IMPOSING PENALTIES.

WHEREAS, due to inadequate supervision, some large gatherings of people, such as parties, frequently become loud and unruly to the point that they constitute a threat to the peace, health, safety, or general welfare of the public as a result of conduct such as one or more of the following: excessive noise, excessive traffic, obstruction of public streets by crowds who have spilled over into public streets, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace, and litter;

WHEREAS, the City of Tucson is required to make multiple responses to such unruly gatherings in order to restore and maintain the peace and protect public safety. Such gatherings are a burden on scarce city resources and can result in police responses to regular and emergency calls being delayed and police protection to the rest of the city being reduced, and;

WHEREAS, in order to discourage the occurrence of repeated loud and unruly gatherings, the persons responsible for the public nuisance created by these gatherings should be penalized.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Tucson Code, Chapter 11, is hereby amended by adding new Article VIII to read as follows:

ARTICLE VIII. LOUD OR UNRULY GATHERINGS

Sec. 11-140. Loud or unruly gatherings-public nuisance.

It shall be a public nuisance to conduct a gathering of five (5) or more persons on any private property in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, as a result of conduct constituting a violation of law.

Illustrative of such unlawful conduct is excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace, and litter.

A gathering constituting a public nuisance may be abated by all reasonable means including, but not limited to, an order requiring the gathering to be disbanded and citation and/or arrest of any law violators under any applicable ordinances and state statutes.

Sec. 11-141. Notice of unruly gathering-posting; mailing.

1. When the police department intervenes at a gathering which constitutes a nuisance under this ordinance, the premises at which such nuisance occurred shall be posted with a notice stating that the intervention of the police has been necessitated as a result of a public nuisance under this ordinance caused by an event at the premises, the date of the police intervention, and that any subsequent event within a sixty (60) day period therefrom on the same premises, which necessitates police intervention, shall result in the joint and several liability of any guests causing the public nuisance, or any persons who own or are residents of the property at which the public nuisance occurred, or who sponsored the event constituting the public nuisance as more fully set forth below.

9

2. The residents of such property shall be responsible for ensuring that such notice is not removed or defaced and it shall be a civil infraction carrying a penalty of a minimum, mandatory one hundred dollar (\$100.00) fine in addition to any other penalties which may be due under this section if such notice is removed or defaced, provided however, that the residents of the premises or sponsor of the event, if present, shall be consulted as to the location in which such notice is posted in order to achieve both the security of the notice and its prominent display.

Sec. 11-142. Mailing of notice to property owner.

Notice of the intervention shall also be mailed to any property owner at the address shown on the Pima County property tax assessment records and shall advise the property owner that any subsequent such intervention within sixty (60) days on the same premises shall result in liability of the property owner for all penalties associated with such intervention as more particularly set forth below.

Sec. 11-143. Persons liable for a subsequent response to a gathering constituting a public nuisance.

If the police department is required to respond to a gathering constituting a public nuisance on the same premises more than once in any sixty (60) day period, the following persons shall be jointly and severally liable for civil fines as set forth below:

1. The person or persons who own the property where the gathering constituting the public nuisance took place, provided that notice has been mailed to the owner of the property as set forth herein and the gathering occurs at least two weeks after the mailing of such notice.
2. The person or persons residing on or otherwise in control of the property where such gathering took place.
3. The person or persons who organized or sponsored such gathering.
4. All persons attending such gathering who engage in any activity resulting in the public nuisance.
5. Nothing in this section shall be construed to impose liability on the resident or owners of the premises or sponsor of the gathering, for the conduct of persons who are present without the express or implied consent of the resident or sponsor, as long as the resident and sponsor have taken all steps reasonably necessary to exclude such uninvited participants from the premises, including landlords who are actively attempting to evict a tenant from the premises.

Where an invited guest engages in conduct which the sponsor or resident could not reasonably foresee and the conduct is an isolated instance of a guest at the event violating the law which the sponsor is unable to reasonably control without the intervention of the police, the unlawful conduct of the individual guest shall not be attributable to the sponsor or resident for the purposes of determining whether the event constitutes a public nuisance under this section.

Sec. 11-144. Violation a Civil Infraction.

It shall be a civil infraction punishable as set forth herein when intervention at the same location to abate a gathering constituting a public nuisance occurs within a sixty (60) day period after the property was posted in accordance with Section 11-141.

1. For the first such intervention in a sixty (60) day period the fine shall be a minimum mandatory five hundred dollars (\$500.00);
2. For the second such intervention in a sixty (60) day period the fine shall be a minimum mandatory one thousand dollars (\$1,000.00);
3. For any further such responses in a sixty (60) day period the fine shall be a minimum mandatory one thousand five hundred dollars (\$1,500.00) for each such further response;
4. The penalties that are provided herein shall be in addition to any other penalties imposed by law for particular violations of law committed during the course of an event which is a public nuisance under this ordinance; and
5. The court may also enter an order of abatement against a party found responsible for a violation of this Article pursuant to Chapter 8 of the Tucson Code.

Sec. 11-145. Enforcement.

The police department is authorized to enforce the provisions of the ordinance only in response to a complaint from a member of the public. However, this provision shall not be interpreted to necessarily require the appearance of the complaining member of the public in court before a violator may be found responsible.

SECTION 2 section 2. If any provision of this ordinance, or the application thereof to any person or circumstances, is declared invalid, that invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this ordinance are severable.

SECTION 3. The various officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this ordinance become immediately effective, an emergency is hereby declared to exist, and this ordinance shall become effective immediately upon its passage and adoption.

The following is the text of notices used to post information about violations or possible violations.

NOTICE OF PUBLIC NUISANCE

PURSUANT TO TUCSON CODE, "#Sec. 11-140">SEC. 11-140, AS A
RESULT OF A PRIOR DISTURBANCE AT THESE PREMISES,
THE NEXT DISTURBANCE WILL RESULT IN CIVIL PENALTIES
IMPOSED UPON ALL PARTICIPANTS AND SPONSORS OF THE EVENT,
AND ALL PROPERTY OWNERS OF THE PREMISES.

NOTICE IS HEREBY GIVEN THAT, pursuant to Tucson Code Sec. 11-140 on (blank) , 199 , at (blank) a.m./p.m., the Tucson Police Department found that a public nuisance caused by a disturbance of the public peace and/or threat to public safety occurred at the premises located at _____.

If there is a subsequent event on these premises which constitutes such a public nuisance and necessitates the intervention of the Police Department on or before _____, (count 60 days from date of first police intervention) every participant in and sponsor of such event, and the owner of the premises, shall be jointly and severally liable for the civil penalties connected with this response as set forth in the Tucson Code, Chapter 11, Article VIII.

(Signature of Officer issuing notice)

(Name of Officer)

(Date posted)

As with any law, please consult legal counsel if you have questions. Or, contact the City Attorney's office, 791-4221.

